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| 10/084,203 | 02/28/2002 | Masaaki Orikasa | Q68749 | 4933 |
| 23373 | 7590 | 06/15/2004 | EXAMINER | |
| SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037 | | | LEWIS, RALPH A | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3732 | |

DATE MAILED: 06/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/084,203

Applicant(s)

ORIKASA, MASAAKI

Examiner

Ralph A. Lewis

Art Unit

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 7, 11, 12 and 14-16 is/are rejected.
- 7) ☒ Claim(s) 5, 6, 8-10 and 13 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 May 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

Objection to the Drawings

The drawings submitted 05/01/2002 are objected to. According to the description page 23 the base and clip are made of a resin material or ceramic material (i.e. the base), yet Figures 2(A), 3(A), 4(a)-4(D), 6, 8, 9, 11, 12, 13, and 14(b) all illustrate the device in cross-section as being made of metal (note MPEP page 600-95). Correction is required.

Rejections based on Prior Art

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-4, 7, 12, 15 and 16 are rejected under 35 U.S.C. 102(e) as being anticipated by Christoff et al (US 6,071,119).

Christoff et al in Figures 15-17 disclose an orthodontic bracket having a base 22g, bracket main body 24g, archwire slot 30g, a guiding part 38g (i.e. slot), a cover

portion with covering claws 64g, 65g, a band shaped clip 32g, clip holding part 34g for covering archwire slot 30g, and clip locking portion having locking claw 66g.

In response to the present rejection applicant argues that the Cristoff et al clip is not attached to the bracket body, but to the clip itself. The examiner disagrees, the clip 32g is most certainly attached to the bracket body, otherwise the Cristoff bracket would be inoperative and fail to hold the archwire to the bracket. Moreover, applicant's attention is drawn to his own disclosed embodiment of Figures 11 and 12 which shows an arrangement similar to the Cristoff et al arrangement. Applicant also argues that the Cristoff clip 32g does not have a "U-shape" when attached, but that it is a ring. The examiner notes that applicant's own disclosure illustrates such a "ring" arrangement in Figures 11 and 12 that presumably meets the limitation. The Cristoff clip has a U-shape as Figure 16 illustrates (note the dotted line showing the attached position). Finally, applicant deems the Cristoff et al elements 64g and 65g to be "notches" rather than the claimed "claws." The examiner can find no explicit definition of the term "claws" in the specification, nor does applicant provide for one in the remarks or explain why the Cristoff et al elements are "notches" and not "claws." The examiner further notes that applicant's specification refers to the illustrated element 60 as "claws" even though like in Cristoff et al it is a "notched" area in an element body from which material is absent or removed. Absent a clear definition, the examiner is required to give terminology its broadest reasonable interpretation.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Christoff et al (US 6,071,119) in view of Rosenberg (US 4,712,999).

Christoff et al fail to teach the claimed "arc-shaped cross sectional shape along its width" direction for pressing down on the arch wire as required in claim 14.

Rosenberg, however for a very similar bracket having a clip for holding an archwire in places teaches that it is desirable to provide the width section with a curved arch shape 8' in order to "bear on the arch wire, locking it and seating it to its base" and "bring about play when desired" (column 3, lines 16-20). To have provided the Christoff et al clip portion 70g, 34g with an arc curvature in order to lock the arch wire in position or bring about the desired play as taught by Rosenberg would have been obvious to one of ordinary skill in the art in view of the Rosenberg teaching. In regard to claim 2, to the extent that the "presses" limitation is not met by Christoff et al alone, it is met by the present modification taught by Rosenberg.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Christoff et al (US 6,071,119).

In the embodiment of Figure 17, Christoff et al disclose an engaging claw formed of stepped slots 64g and 65g having a rectangular profile, rather than the claimed “tapered step portion.” In a further embodiment, Figure 20, Christoff et al, teaches the forming of the engaging claw of taper step projections 64h, 66h. to have formed the stepped claw members 64g and 65g of the Figure 17 embodiment of tapered step projections as taught to be an alternative in the Figure 20 embodiment would have been obvious to one of ordinary skill in the art in view of the Christoff et al that the claw structure may be alternatively formed.

Allowable Subject Matter

Applicant's remarks with respect to the rejection based on Hanson (5,906,486) are deemed persuasive – the examiner notes particularly column 9, lines 1-8 that indicates that surface 58 is parallel to the gingival occlusal plane. Additionally, the rejection of claim 6, based on Cristoff et al is withdrawn.

Claims 5, 6, 8-10 and 13 are objected to as being dependent on a rejected base claim, but would be allowable if rewritten in independent form to include all of the limitations of the claims from which they depend.


Action Made Final

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication should be directed to **Ralph Lewis** at telephone number **(703) 308-0770**. Fax (703) 872-9306. The examiner works a compressed work schedule and is unavailable every other Friday. The examiner's supervisor, Kevin Shaver, can be reached at (703) 308-2582.

R.Lewis
June 10, 2004


Ralph A. Lewis
Primary Examiner
AU3732